

41-3-401. Disclosure of financing arrangements relating to the sale of motor vehicles.

(1) (a) A dealer may not issue a temporary permit or release possession of a motor vehicle that the dealer has sold to someone other than another dealer unless the document of sale contains one of the disclosures listed in Subsection (2).

(b) The disclosures shall be set forth clearly and conspicuously on the first or front page of the sale document at the time of sale, executed by the purchaser, and for Subsection (2)(b), executed by the seller also.

(2) (a) The form to be used when financing is the purchaser's responsibility shall read as follows:

"THE PURCHASER OF THE MOTOR VEHICLE DESCRIBED IN THIS CONTRACT ACKNOWLEDGES THAT THE SELLER OF THE MOTOR VEHICLE HAS MADE NO PROMISES, WARRANTIES, OR REPRESENTATIONS REGARDING SELLER'S ABILITY TO OBTAIN FINANCING FOR THE PURCHASE OF THE MOTOR VEHICLE. FURTHERMORE, PURCHASER UNDERSTANDS THAT IF FINANCING IS NECESSARY IN ORDER FOR THE PURCHASER TO COMPLETE THE PAYMENT TERMS OF THIS CONTRACT ALL THE FINANCING ARRANGEMENTS ARE THE SOLE RESPONSIBILITY OF THE PURCHASER.

(Signature of the purchaser)"

(b) The form to be used when the seller agrees to seek arrangements for financing shall read as follows:

"(1) THE PURCHASER OF THE MOTOR VEHICLE DESCRIBED IN THIS CONTRACT HAS EXECUTED THE CONTRACT IN RELIANCE UPON THE SELLER'S REPRESENTATION THAT THE SELLER CAN PROVIDE FINANCING ARRANGEMENTS FOR THE PURCHASE OF THE MOTOR VEHICLE. THE PRIMARY TERMS OF THE FINANCING ARE AS FOLLOWS:

INTEREST RATE BETWEEN _____ % AND _____ % PER ANNUM, TERM BETWEEN _____ MONTHS AND _____ MONTHS. MONTHLY PAYMENTS BETWEEN \$ _____ PER MONTH AND \$ _____ PER MONTH BASED ON A DOWN PAYMENT OF \$ _____.

(2) (a) IF SELLER IS NOT ABLE TO ARRANGE FINANCING WITHIN THE TERMS DISCLOSED, THEN SELLER MUST WITHIN SEVEN CALENDAR DAYS OF THE DATE OF SALE MAIL NOTICE TO THE PURCHASER THAT HE HAS NOT BEEN ABLE TO ARRANGE FINANCING.

(b) PURCHASER THEN HAS 14 DAYS FROM THE DATE OF SALE TO ELECT, IF PURCHASER CHOOSES, TO RESCIND THE CONTRACT OF SALE PURSUANT TO SECTION 41-3-401.

(c) IN ORDER TO RESCIND THE CONTRACT OF SALE, THE PURCHASER SHALL:

- (i) RETURN TO SELLER THE MOTOR VEHICLE HE PURCHASED;
- (ii) PAY THE SELLER AN AMOUNT EQUAL TO THE CURRENT STANDARD MILEAGE RATE FOR THE COST OF OPERATING A MOTOR VEHICLE ESTABLISHED BY THE FEDERAL INTERNAL REVENUE SERVICE FOR EACH MILE THE MOTOR VEHICLE HAS BEEN DRIVEN; AND
- (iii) COMPENSATE SELLER FOR ANY PHYSICAL DAMAGE TO THE MOTOR

VEHICLE.

(3) IN RETURN, SELLER SHALL GIVE BACK TO THE PURCHASER ALL PAYMENTS OR OTHER CONSIDERATION PAID BY THE PURCHASER, INCLUDING ANY DOWN PAYMENT AND ANY MOTOR VEHICLE TRADED IN.

(4) IF THE TRADE-IN HAS BEEN SOLD OR OTHERWISE DISPOSED OF BEFORE THE PURCHASER RESCINDS THE TRANSACTION, THEN THE SELLER SHALL RETURN TO THE PURCHASER A SUM EQUIVALENT TO THE ALLOWANCE TOWARD THE PURCHASE PRICE GIVEN BY THE SELLER FOR THE TRADE-IN, AS NOTED IN THE DOCUMENT OF SALE.

(5) IF PURCHASER DOES NOT ELECT TO RESCIND THE CONTRACT OF SALE AS PROVIDED IN SUBSECTION (2)(b) OF THIS FORM:

(a) THE PURCHASER IS RESPONSIBLE FOR ADHERENCE TO THE TERMS AND CONDITIONS OF THE CONTRACT OR RISKS BEING FOUND IN DEFAULT OF THE TERMS AND CONDITIONS;

(b) THE TERMS AND CONDITIONS OF THE DISCLOSURES SET FORTH IN SECTION (1) OF THIS FORM ARE NOT BINDING ON THE SELLER; AND

(c) IF FINANCING IS NECESSARY FOR THE PURCHASER TO COMPLETE THE PAYMENT TERMS OF THE CONTRACT OF SALE, THE PURCHASER IS SOLELY RESPONSIBLE FOR MAKING ALL THE FINANCING ARRANGEMENTS.

(6) SIGNING THIS DISCLOSURE DOES NOT PROHIBIT THE PURCHASER FROM SEEKING HIS OWN FINANCING.

(Signature of the purchaser)

(Signature of the seller)"

(3) (a) (i) In addition to the penalties in this chapter, if the disclosures in Subsection (2) are not properly executed or if the seller is unable to provide the financing arrangements for the purchaser as provided in Subsection (2)(b) within seven calendar days immediately following the sale date disclosed on the document of sale, then in either case the purchaser may return the purchased motor vehicle to the dealer and receive a complete refund of all money and other consideration given to the dealer for the purchase, including any motor vehicle or property used as a trade-in.

(ii) If the motor vehicle or property used as a trade-in has been sold or otherwise disposed of, the seller shall return to the purchaser the amount of money equivalent to the allowance towards the purchase price given by the dealer for the motor vehicle or property traded in, as noted in the document of sale.

(b) If the purchaser qualifies for the remedies set forth in Subsection (3)(a) and if the purchaser elects to rescind by returning the purchased motor vehicle to the dealer within the prescribed time frame, then the purchaser is liable to the dealer:

(i) for all physical damage to the motor vehicle while in the possession of the purchaser; and

(ii) in an amount equal to the current standard mileage rate for the cost of operating a motor vehicle established by the federal Internal Revenue Service for each mile the motor vehicle was driven between the date the purchaser first acquired possession and the date when the purchaser returned the motor vehicle to the dealer.

(c) The purchaser is not entitled to the remedy set forth in Subsections (3)(a)

and (b) if the purchaser materially misrepresents in writing any information requested by the dealer in an application for financing, financial statement, or similar document customarily used to elicit personal and financial data upon which a credit decision is normally predicated.

(4) (a) A dealer who has complied with Subsection (2)(b), but who has not been able to secure financing as set forth in the disclosure, shall within seven days of the date of sale mail written notice to the purchaser:

(i) disclosing that the dealer has not been able to secure financing as set forth in the disclosure; and

(ii) instructing the purchaser of his right to rescind the contract of sale within 14 calendar days of the date of sale, as provided for in Subsection (2).

(b) (i) The dealer shall mail notification to the purchaser within seven calendar days following the date of sale as set forth in the contract of sale.

(ii) This notice complies with Subsection (4)(b)(i) if it is postmarked before the end of the seventh day following the date of sale and addressed to the purchaser at the address contained in the document of sale.

(iii) If the purchaser's address is not contained on the document of sale, then proof of compliance with the notification provision of this Subsection (4)(b) shall be borne by the dealer.

(iv) If a dealer gives notice in the manner prescribed, the purchaser has 14 calendar days from the date of sale to elect to rescind the contract of sale, in accordance with Subsection (2).

(c) (i) If a dealer executes the disclosure required by Subsection (2)(b), but is not able to secure financing as set forth in the disclosure, and the dealer fails to give written notice to the purchaser within seven days, as provided for in Subsections (4)(a) and (b), then the purchaser may rescind within seven days of the date he first learns that the dealer has not been able to secure financing as set forth in the disclosure.

(ii) Except as provided in this Subsection (4)(c), the purchaser's option to rescind shall be exercised in the manner prescribed in Subsection (3).

(d) If the purchaser does not exercise the option to rescind within the specified time limits in Subsections (3) and (4)(c):

(i) the purchaser is responsible for adherence to the terms and conditions of the contract of sale;

(ii) the dealer is not subject to the financing terms set forth in the disclosure; and

(iii) if financing is necessary for the purchaser to complete the payment terms of the contract of sale, the purchaser is solely responsible for making all the financing arrangements.

(5) A dealer's failure to execute the disclosure required by Subsection (2), or its failure to provide written notice to the purchaser within the time frame specified in this section, subject the dealer to the sanctions in Section 41-3-701.

(6) Either the purchaser or a dealer may bring an action to enforce his rights under this section. The prevailing party in the action is entitled to reasonable attorneys' fees as part of the costs of suit.

(7) A motor vehicle returned by the purchaser to the dealer in accordance with the rescission provisions of this section is not considered sold for purposes of notice of sale under Section 41-3-301 and for purposes of sales tax under Title 59, Chapter 12,

Sales and Use Tax Act.

Amended by Chapter 71, 2003 General Session